IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 34542 of 2006(K)

PETITIONER:

JOSE MANI,S/O.LATE K.I.MANI,
2284,14TH MAIN,HAL II STAGE,
INDIRA NAGAR,BANGALORE 560 008.

BY ADV. SRI.E.R.VENKATESWARAN

RESPONDENTS:

1. THE TAHSILDAR,KANAYANNUR,
   KANAYANNUR TALUK OFFICE,
   COCHIN-31.

2. THE VILLAGE OFFICER,
   EDAPPALLY SOUTH VILLAGE.

3. STATE OF KERALA,REP.BY THE SECRETARY,
   DEPARTMENT OF REVENUE,SECRETARIAT,
   THIRUVANANTHAPURAM.

BY GOVT.PLEADER SRI SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN,J.

W.P.(C).NO.34542 OF 2006

Dated this the 19th day of January, 2007

JUDGMENT

The challenge made in this writ petition is against Ext.P1 order of assessment of the building consisting of several flats. The assessment is made on the builder. According to the petitioner, the construction of the building was done with the funds provided by the several flat owners and hence applying the principles in the decisions in **Tharu v. Tahsildar (2003(1) KLT 219) and Rasheed v. Tahsildar (2004 (3) KLT 945)** the unit of assessment should be the area covered by each flat and further that the liability to pay the building tax will be on the owner of such flats. According to him, sufficient opportunity was not given to him to

substantiate his contention. Ext.P13 was an objection preferred by the petitioner. The learned Government Pleader was asked as to whether Ext.P13 and any of the documents were filed by the petitioner. It was submitted by the learned Government Pleader that sale deed and construction agreements were produced. The documents were not however produced. But Ext.P1 order even does not refer to the agreement so produced, which is in the printed form. Therefore, the contentions as advanced by the petitioner was not considered and the order has been passed in a mechanical way. As such the order is violative of the principles of natural justice. Ext.P1 in such circumstances, is set aside on condition that the petitioner shall pay an amount of

Rs.2,00,000/- (Rupees two lakhs) within two weeks. The petitioner shall produce whatever materials he wants to rely upon before the assessing officer along with the amount to be paid as aforesaid. It is open to the assessing officer to issue notice to the flat owners and the petitioner shall furnish the name and other details of the flat owners along with the materials as aforesaid. The assessing officer shall hear the parties and dispose of the matter after consideration of such materials.

Writ Petition is allowed by way of remand.

P.R.RAMAN,
Judge.

kcv.